LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
MAR 29 1969
JOHN F. DAVIS, CLERK

No. 1213

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1968

LOU DE YOUNG'S MARKET BASKET, INC.,
Petitioner

v.

NATIONAL LABOR RELATIONS BOARD,
Respondent

Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

---

LAURENT K. VARNUM
Counsel for Petitioner

EUGENE ALKEMA
GARY P. SKINNER
Of Counsel

Business Address:

VARNUM, RIDDERING, WIERENGO & CHRISTENSON
666 Old Kent Building
Grand Rapids, Michigan 49502

AMERICAN BRIEF AND RECORD COMPANY, FIFTY MARKET AVENUE, N.W., GRAND RAPIDS, MICHIGAN 49502 — PHONE GL 8-5326

INDEX

	Page
Opinions below	1
Jurisdiction	2
Questions presented	2
Statutes, federal rules, and regulations involved	3
Statement	3
Reasons for granting the writ	6
Conclusion	11
Appendix	12-46
Relevant provisions of the NLRA, as amended	12-14
Board's Decision and Order	15-33
Sixth Circuit's Decision	34-46

CITATIONS

CASES:

Food Store Employees Union, Local No. 347 v. Gissel Packing Co., Inc., 398 F.2d 336 (4th Cir. 1968), *cert. granted,* 393 U.S. 997 (1968)	6
Franks Bros. Co. v. NLRB, 321 U.S. 702 (1944)	7
Joy Silk Mills, Inc. v. NLRB, 185 F.2d 732 (D.C. Cir. 1950), *cert. denied,* 341 U.S. 914 (1951)	9
NLRB v. Ben Duthler, Inc., 395 F.2d 28 (6th Cir. 1968)	7
NLRB v. Dan River Mills, Inc., 274 F.2d 381 (5th Cir. 1960)	7
NLRB v. Gissel Packing Co., Inc., 398 F.2d 336 (4th Cir. 1968), *cert. granted,* 393 U.S. 997 (1968)	6, 7
NLRB v. Lou DeYoung's Market Basket, Inc., ... F.2d ..... (6th Cir. 1969), 70 LRRM 2262	9

CASES (Cont'd):

	Page
NLRB v. River Togs, Inc., 382 F.2d 198 (2d Cir. 1967)	7, 8, 9
NLRB v. S. S. Logan Packing Co., 386 F.2d 562 (4th Cir. 1967)	7
Pep Boys, 172 NLRB No. 23, 68 LRRM 1308 (1968)	8
Schwarzenbach-Huber Co. v. NLRB, ... F.2d ..... (2d Cir. 1969), 70 LRRM 2805	8
Sinclair Co. v. NLRB, 397 F.2d 157 (1st Cir. 1968), *cert. granted*, 393 U.S. 997 (1968)	6, 7
United Mine Workers of America v. Arkansas Oak Flooring Co., 351 U.S. 62 (1956)	7

STATUTES AND REGULATIONS:

National Labor Relations Act, as amended	3

MISCELLANEOUS:

Comment, 75 Yale L.J. 805 (1966)	6
Lesnick, Establishment of Bargaining Rights Without an NLRB Election, 65 Mich. L. Rev. 851 (1967)	9

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1968

LOU DE YOUNG'S MARKET BASKET, INC.,

Petitioner

v.

NATIONAL LABOR RELATIONS BOARD,

Respondent

Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

---

Petitioner prays that a writ of certiorari issue to review the judgments of the United States Court of Appeals for the Sixth Circuit entered in the above case on January 17, 1969.

OPINIONS BELOW

The opinion of the National Labor Relations Board is reported at 159 N.L.R.B. No. 54, 62 LRRM 1447 (1966). The opinion of the Court of Appeals for the Sixth Circuit enforcing the order of the Board is not officially reported yet but is unofficially reported at 70 LRRM 2262 (1969).

JURISDICTION

The judgments of the Court of Appeals for the Sixth Circuit were made and entered on January 17, 1969, and copies thereof are appended to this petition in the Appendix at pp. 34-46. The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

QUESTIONS PRESENTED

The National Labor Relations Board found that Petitioner, a Corporation operating retail stores in Grand Rapids and Holland, Michigan, violated the National Labor Relations Act [29 U.S.C. §§ 158(a)(1), (3) and (5)] by (1) unlawful interrogation, threats and promulgation of a no-solicitation rule (a total of seven 8(a)(1) violations), (2) discriminatory discharges of three employees and (3) refusing to recognize and bargain with the Union in a unit limited to certain employees of the Grand Rapids store. The Court of Appeals for the Sixth Circuit enforced the Board's Decision and Order in its entirety. The questions presented are:

1. Is an employer, irrespective of his other unfair labor practices, justified in refusing to recognize a Union that bases its claim to representative status solely on possession of authorization cards signed by a majority of employees?

2. Does an employer violate Section 8(a)(5) of the Act and lose its right to a reasonable time to investigate an alleged majority after refusing recognition of a Union that bases its claim to representative status solely on authorization cards, where the employer promptly retains legal counsel after the refusal, and then several days later offers to bargain with the Union?

3. Were the employer's unfair labor practices which occurred early in the Union's organization campaign, coupled with its refusal to recognize the Union that

bases its claim to representative status solely on authorization cards, legally sufficient to establish the employer's lack of good faith doubt as to the Union's majority where there is no proof that any of the unfair labor practices had the effect of destroying the Union's majority?

4. Is an employer, irrespective of his other unfair labor practiees, justified in refusing recognition of a Union that bases its claim to representative status solely on authorization cards where the employer has a good faith doubt that the unit requested is appropriate?

STATUTES, FEDERAL RULES, AND REGULATIONS INVOLVED

The pertinent portions of 29 U.S.C. §141, *et seq.*, the National Labor Relations Act, as amended, are set forth in the Appendix at pp. 12-14.

STATEMENT

Petitioner is a Michigan corporation operating one retail food store in a Grand Rapids suburb and another in Holland. The corporation's sole stockholders are Lou DeYoung, President and Simon Wedgwood, Vice President and Secretary, who jointly manage the business.

The Union began its organizational campaign on December 8, 1964 (125a)[1] and limited all of its efforts to the Grand Rapids Store. On December 16, the Union representative orally requested recognition of Wedgwood and Wedgwood said "No, I don't want to hear it (128a-129a). On the same day, the Union wrote a letter to DeYoung confirming the request and Wedgwood's statement (130a) and asked for

---

[1] Numbers in parentheses followed by the letter "a" refer to pages of the Joint Appendix which is part of the certified record in this case. All dates are 1964 unless otherwise noted.

a date to prove its majority, discuss the unit, and to start bargaining (G.C. Ex. 3, 270a-271a). DeYoung was requested to call the Union regarding the time and place for the requested meeting. This letter was received by Petitioner on December 18th and the following day Petitioner sought and received legal advice that the unit demanded was inappropriate because it did not include the Holland employees and the gas station employees and did not exclude the confidential employees and the students employed part time on a work training program in cooperation with their high school (232a). Acting on this advice, a letter was sent by Wedgwood to the Union on December 22 in response to the Union's letter of December 16 (G.C. Ex. 4, 271a). Petitioner stated in its letter that it had doubts that the Union represented a majority of its employees and also stated that authorization cards were not accurate indications of the free choice of its employees in light of the circumstances under which some of the cards were obtained. Petitioner also offered to bargain with the Union if they could establish that a majority of an appropriate group of employees in fact wished to be represented by the Union. Petitioner further indicated that a secret election would seem to be a proper method for determining the desires of the employees and offered to cooperate in arranging for such an election if the Union wished.

On December 21, before receiving the Petitioner's letter, the Union petitioned for a representation election (131a, G.C. Ex. 5, 272a-276a) which it later withdrew.

Unfair labor practice charges were filed on January 7, 1965 (22a) alleging that Petitioner's refusal to bargain and the three discharges (and one other involving employee) were unlawful and that Section 8(a)(1) had been violated by certain statements made by Petitioner and by promulgation of a no-solicitation rule.

One employee was discharged on December 9 (168a) and two employees were discharged on December 11 (142a, 207a). Six 8(a)(1) violations occurred between December 8-11. After the Union's original request for recognition on December 16, there was only one violation found by the Board and that was an 8(a)(1) violation consisting of at most a veiled threat (181a).

The Trial Examiner found no violation in the refusal to recognize, no violation with respect to the discharges of three employees and no violation with respect to the alleged no-solicitation rule, but did find certain 8(a)(1) violations and an 8(a)(3) violation in the discharge of one employee (T.X. Dec. 22a-65a).

The Board reversed the Trial Examiner with respect to the refusal to recognize, two of the discharges and the alleged no-solicitation rule. It affirmed the Trial Examiner's decision with respect to the 8(a)(1) violations and the other discharge. It affirmed also the dismissal of charges relating to one employee's termination (Bd. Dec. 3a-22a).

The Court of Appeals for the Sixth Circuit, whose jurisdiction was invoked under 29 U.S.C. §160 (e), found substantial evidence in the record as a whole to support the Board's findings of seven 8(a)(1) violations including the promulgation of an unlawful no-solicitation rule and substantial evidence to support the Board's findings that three employees were discharged because of their Union sentiment and activities.

The Court of Appeals also found that there was no abuse of discretion on the part of the Board in finding that the Grand Rapids employees were an appropriate unit for collective bargaining and that the Union had made a clear and unequivocal bargaining demand for the Grand Rapids store despite the tortuous expansion and extraction of the Unit which occurred thereafter. The Court of Appeals found that the General Counsel had sustained its burden of proving bad faith on part of the employer in violation of Section 8(a)(5) because of the three discharges on December 9 and December 11, because of the six Section 8(a)(1) violations occurring between December 8 and December 11, and because of the one 8(a)(1) violation occurring on December 18.

Finally, the Court of Appeals also found, as did the Board, that Petitioner's refusal to bargain occurred on December 16 and that good faith doubt was to be measured from that date. It held that though an employer is to be granted a reasonable time to investigate the Union's majority after a demand for recognition, the Petitioner waived this right because it responded to the Union's

letter written December 16th rather than to the Union's December 16th oral demand. The Court of Appeals stated that the letter was a second demand and the Petitioner was bound by its rejection of the oral demand. Therefore the Court refused to examine any events that occurred after December 16 on the issue of good faith except for the one 8(a)(1) violation of December 18.

REASONS FOR GRANTING THE WRIT

The decision below that an employer may not refuse recognition of a Union that bases its claim to representative status solely on authorization cards unless it has a good faith doubt as to the alleged majority is in conflict with two Fourth Circuit cases which this Court has consolidated and agreed to hear, i.e., *Food Store Employees Union Local No. 347 v. Gissel Packing Co., Inc.*, 398 F.2d 336 (4th Cir. 1968), *cert. granted*, 393 U.S. 997 (1968) and *NLRB v. Gissel Packing Co., Inc.*, 398 F.2d 336 (4th Cir. 1968), *cert. granted*, 393 U.S. 997 (1968), though in accord with a First Circuit case in which certiorari has also been granted, i.e., *Sinclair Co. v. NLRB*, 397 F.2d 157 (1st Cir. 1968), *cert. granted*, 393 U.S. 997 (1968). In addition to raising the identical question posed in those cases, *supra*, the decision below raises several other substantial issues of far reaching importance which should be settled by this Court.

1. Much has been written and said about the inherent unreliability of authorization cards and whether their use by a Union in attempting to gain recognition as the bargaining representative of a group of employees is sanctioned under the National Labor Relations Act, as amended, E.g. Comment, 75 Yale L.J. 805 (1966). It is indeed questionable whether Congress meant by the Taft-Hartley Amendments of 1947 to the Act to permit or allow any means other than a secret ballot election for the selection of a bargaining representative.[2] This Court found it un-

[2] Labor Management Relations Act (Taft-Hartley Act), 61 Stat.136 (1947), 29 U.S.C. §141, *et seq.*

necessary to resolve this question in the cases of *Franks Bros. Co. v. NLRB*, 321 U.S. 702 (1944), and *United Mine Workers of America v. Arkansas Oak Flooring Co.*, 351 U.S. 62 (1956). As Petitioner's case presents the identical question which this Court has recently agreed to hear and resolve in the *Gissel* and *Sinclair* cases, and because of the importance of this issue, Petitioner desires to have its views and arguments presented to the Court.

2. More importantly however, the decision of the Court of Appeals raises several other substantial issues which this Court should resolve and which are not raised in the *Gissel* and *Sinclair* cases. The court below held that if a union makes an oral demand for recognition of an employer based solely on authorization cards and is initially refused recognition by the employer who states "No, I don't want to hear it", he has violated Section 8(a)(5) of the Act,[3] and is guilty of a refusal to bargain even though the employer promptly retains legal counsel and then offers to bargain with the Union if it can establish that a majority of an appropriate group of employees in fact wish to be represented by the Union and also offers to cooperate with the Union in arranging for a secret ballot election if desired by the Union. The court's decision that the employer does not have a reasonable time to investigate the Union's alleged majority (and, inferentially, to obtain legal advice) after a demand for recognition is not only erroneous and in conflict with its own decision in *NLRB v. Ben Duthler, Inc.*, 395 F.2d 28, 32, n.2 (6th Cir. 1968), but is also in conflict with the Second, Fourth and Fifth Circuits on this issue. *NLRB v. River Togs, Inc.*, 382 F.2d 198, 206 (2d Cir. 1967); *NLRB v. S.S. Logan Packing Co.*, 386 F.2d 562, 567-568 (4th Cir. 1967); and *NLRB v. Dan River Mills, Inc.*, 274 F.2d 381, 387-388 (5th Cir. 1960).

The court's stated reason for so holding is that Petitioner replied to the Union's letter written on the same day of the oral demand rather than to the oral demand. Such a holding is not only erroneous but is hypertechnical for the court's decision implies that if Petitioner had stated in its letter that it was replying to the Union's oral demand

---

[3] 29 U.S.C. §158(a)(5).

and not to its letter confirming that demand written the same day, then Petitioner would be entitled to a reasonable time to investigate the majority status of the Union and to obtain legal advice. We believe that an employer faced with a demand for recognition from a Union claiming majority status based on authorization cards is always entitled to a reasonable time to investigate the alleged majority, to secure legal advice, and also to make its views known to the employees and should not be cast in bad faith "for equivocal spontaneous reactions to a union summons . . .; even if he does not doubt the union's assertion that a majority had signed cards, he is [at the very least] entitled to find out something about the circumstances." *NLRB v. River Togs, Inc., supra* at p. 206. See also *Schwarzenbach-Huber Co. v. NLRB,* ..... F.2d..... (2d. Cir. 1969), 70 LRRM 2805, 2813.

3. Since the court below refused to look at what the employer in fact did after the oral demand for recognition (except for the one 8(a)(1) violation), it avoided the issue raised by Petitioner which was that good faith doubt as to the appropriateness of a bargaining unit is a defense to a refusal to bargain charge regardless of whether Petitioner doubted the majority status of the Union at the time of the demand. Petitioner received legal advice that the unit sought by the Union was inappropriate and this advice was borne out by the subsequent changes in the unit after the Union's initial demand. It was further borne out by the fact that Petitioner's contention that the only appropriate unit was a unit which included employees of both the Grand Rapids and Holland stores was sustained by the Trial Examiner. The Board's reversal of the Trial Examiner's decision and the court's affirmance is at odds with a decision of the Board nearly on all fours factually with Petitioner's case. *Pep Boys,* 172 NLRB No. 23, 68 LRRM 1308 (1968). However, whether or not the court's holding that there was no abuse of discretion on the part of the Board in finding that the Grand Rapids employees were an appropriate unit is correct, we nevertheless believe that an employer's doubts concerning the appropriateness and composition of a bargaining unit are entitled to be resolved in a representation proceeding and

that an employer does not act at his peril in withholding recognition in such a case.

4. Finally, in addition to ignoring what the employer did after the oral demand for recognition as it related to the employer's good faith or lack thereof, the court below held the General Counsel had met its burden of proving bad faith because of three employee discharges and seven 8(a)(1)[4] violations, all of which but one had occurred at the *beginning* of the Union's organizational campaign nearly one week before the demand for recognition was made. This holding is not only questionable but as a matter of logic and common sense is not sustainable for these unfair labor practices obviously did not prevent the acquisition of a claimed majority which the Union asserted it had achieved nearly a week later and could therefore, in no way, be said to have been done in order to gain time in which to dissipate a majority. The court below avoided using that formula phrase which the Board has used so many times in the past beginning with *Joy Silk Mills, Inc. v. NLRB*, 185 F.2d 732 (D.C. Cir. 1950), *cert. denied*, 341 U.S. 914 (1951), and instead based its decision on the statement that Petitioner's earlier unfair labor practices were a "substantial and sustained effort to thwart Respondent's employees in their efforts to organize its store." *NLRB v. Lou DeYoung's Market Basket, Inc.*, ... F2d ..... (6th Cir. 1969), 70 LRRM 2262, 2268. There is a world of difference between "a desire to prevent the acquisition of majority status as [compared] with a purpose to destroy an existing majority." Lesnick, *Establishment of Bargaining Rights without an NLRB Election*, 65 Mich. L Rev. 851, 855 (1967). "As Judge Learned Hand said in a similar context, his response 'however unlawful in itself it may have been, throws substantially no light on how far he thought the effort had succeeded to form a union. As a penalty it might be proper, but as a link in reasoning it seem to us immaterial.' *NLRB v. James Thompson & Co., supra*, 208 F.2d at 746, 33 LRRM 2205." *NLRB v. River Togs, Inc., supra* at p. 207.

---

[4] 29 U.S.C. §158(a)(1).

We do not believe evidence of good faith doubt is negated by an employer's desire to thwart unionization whether by proper or improper means. Clearly, employer opposition to unionization is not only permitted but anticipated by the National Labor Relations Act. Section 8(a)(2)[5] was written with an intention to prevent union-management collusion and Section 8(c)[6] grants an employer protection to express his views against a union. In Petitioner's case, lack of good faith doubt was said to have been established because of the misconduct which had occurred nearly a week before the demand for recognition. An employer's misconduct prior to a refusal to recognize a Union by itself in no way establishes his lack of good faith doubt for it is also his conduct at the time and subsequent to his refusal that is just as important. As noted before, the Court of Appeals refused to consider the employer's conduct subsequent to the refusal except for the 8(a)(1) violations; yet, if good faith doubt is the test which must be met, it would seem that all relevant and material conduct on the part of an employer should be taken into account in determining whether or not an employer has in fact acted in good faith. As noted before, the employer's subsequent conduct was free of any unfair labor practices except one 8(a)(1) violation. Petitioner offered to bargain with the Union and also offered to cooperate with the Union in arranging an election if desired by the Union. The day before the employer's letter was sent to the Union, the Union filed a representation petition seeking an election which it subsequently withdrew thereby preventing the prompt resolution of the unit question and an election.

5. The questions presented by this case are of great and recurring significance in the administration of the National Labor Relations Act, as amended. The important nature of one of these issues has already been recognized by this Court when it granted certiorari in the *Gissel* and *Sinclair* cases. The other questions presented by Petitioner's case are just as important as the question which this court has agreed to hear.

---

[5] 29 U.S.C. §158(a)(2).

[6] 29 U.S.C. §158(c).

CONCLUSION

For the reasons set forth above, it is respectfully submitted that this petition for a writ of certiorari should be granted.

LAURENT K. VARNUM
Counsel for Petitioner

EUGENE ALKEMA
GARY P. SKINNER
Of Counsel

Business Address:

VARNUM, RIDDERING, WIERENGO & CHRISTENSON
666 Old Kent Building
Grand Rapids, Michigan 49502

APPENDIX

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 29 U.S.C. §§ 141, *et seq.*) are as follows:

RIGHTS OF EMPLOYEES

Sec. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a)(3).

UNFAIR LABOR PRACTICES

Sec. 8. (a) It shall be an unfair labor practice for an employer—

(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7;

(2) to dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: * * *

(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: * * *

(5) to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9(a).

* * *

(c) The expressing of any views, argument, or opinion, or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice under any of the provisions of this Act, if such expression contains no threat of reprisal or force or promise of benefit.

* * *

REPRESENTATIVES AND ELECTIONS

Sec. 9. (a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: * * *

(b) The Board shall decide in each case whether, in order to assure to employees the fullest freedom in exercising the rights guaranteed by this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof: *Provided*, That the Board shall not (1) decide that any unit is appropriate for such purposes if such unit includes both professional employees and employees who are not professional employees unless a majority of such professional employees vote for inclusion in such unit; or (2) decide that any craft unit is inappropriate for such purposes on the ground that a different unit has been established by a prior Board determination, unless a majority of the employees in the proposed craft unit vote against separate representation or (3) decide that any unit is appropriate for such purposes if it includes, together with other employees, any individual employed as a guard to enforce against employees and other persons rules to protect property of the employer or to protect the safety of persons on the employer's premises; but no labor organization shall be certified as the representative of employees in a bargaining unit of guards if such organization ad-

mits to membership, or is affiliated directly or indirectly with an organization which admits to membership, employees other than guards.

(c) (1) Wherever a petition shall have been filed, in accordance with such regulations as may be prescribed by the Board—

> (A) by an employee or group of employees or any individual or labor organization acting in their behalf alleging that a substantial number of employees (i) wish to be represented for collective bargaining and that their employer declines to recognize their representative as the representative defined in section 9(a), or (ii) assert that the individual or labor organization, which has been certified or is being currently recognized by their employer as the bargaining representative, is no longer a representative as defined in section 9(a); or
>
> (B) by an employer, alleging that one or more individuals or labor organizations have presented to him a claim to be recognized as the representative defined in section 9(a);

the Board shall investigate such petition and if it has reasonable cause to believe that a question of representation affecting commerce exists shall provide for an appropriate hearing upon due notice. Such hearing may be conducted by an officer or employee of the regional office, who shall not make any recommendations with respect thereto. If the Board finds upon the record of such hearing that such a question of representation exists, it shall direct an election by secret ballot and shall certify the results thereof.

• • •

BOARD'S DECISION AND ORDER

LOU DE YOUNG'S MARKET BASKET, INC., Wyoming, Mich. and RETAIL STORE EMPLOYEES UNION, LOCAL NO. 20, RETAIL CLERKS INTERNATIONAL ASSOCIATION, AFL-CIO, Case No. 7-CA-4994, June 21, 1966, 159 NLRB No. 54.

* * *

Before McCulloch, Chairman; Fanning and Jenkins, Members.

* * *

On January 21, 1966, Trial Examiner Lloyd Buchanan issued his Decision in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the attached Trial Examiner's Decision. He further found that the Respondent had not engaged in certain other unfair labor practices alleged in the complaint and recommended that such allegations be dismissed. Thereafter, the Respondent filed exceptions and a brief in support, the General Counsel filed exceptions and a brief in support, and the Respondent filed a brief answering the General Counsel's exceptions.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its powers in connection with this case to a three-member panel.

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the entire record in this case, including the Trial Examiner's Decision, the exceptions and briefs, and hereby adopts the Trial Examiner's finding, conclusions and recommendations except as modified.

The following findings of the trial examiner were adopted by the Board:

On December 9, one of the employees, in the presence of others, asked a supervisor whether the company president knew anything about the union. The supervisor replied: "He is on to you guys. He has names and he is going to take steps to stop you."

On December 11, a supervisor stated, in the presence of several employees, that, if he had to, he could run the store with fewer employees if the union came in, and that part-time help would have to be cut out.

On December 18, during a conversation with an employee concerning the union, this supervisor referred to possible discharges and to automation and layoffs in his experience elsewhere, adding that the union would not hurt him, but would hurt the employees.

The union activity had commenced on December 8 and was led by an employee who solicited and obtained signatures on union cards. On December 9, the employer said he was "going to put a stop to this." He thereupon left his office, returned with the union leader, and directed that this employee be given his "time," adding that there were going to be a few changes. After the employee left, the employer stated: "That was just the beginning, there would be more yet."

The employer later attempted to justify this discharge by contending that he needed to reduce staff or that the employee wasted time. Others who admittedly participated with the discharged employee in the alleged "goofing off" were not disciplined. The employee's supervisor said he was a "pretty good man" who the supervisor never criticized for his work. This discharge is found to be unlawful.

Also on December 9, the employer approached an employee whom he suspected of union activity and asked him about reports that he was very unhappy with his job and had other jobs lined up. The employee said this was true and cited one job that looked especially good. The employer then suggested that it might be a good idea to take one of those jobs. The employee agreed, saying that he

would finish the day, which he did. No violation is found in this termination.

[Text] 1. The Trial Examiner found no violation of Section 8(a)(1) of the Act based on supervisor Meinardi's threatening comment on December 8, at the beginning of the Union's organizational campaign, to employees Boosamra and Slagter to the effect that, if president DeYoung came into the back of the store and found one soliciting the other, he would "fire" both of them. Contrary to Board precedent, the Trial Examiner concluded that Boosamra lost his status as an employee because he was off-duty at the time,[1] and he dismissed the incident without further reference to Slagter. The incident occurred in the store's break or back room, with Slagter on his break time and Boosamra having returned to the store after a Union meeting. Clearly a threat by a supervisor is no less coercive when employees are on non-work time.[2]

The Trial Examiner concluded that the record evidence on interrogation was limited to one instance, which was too isolated to justify a finding of violation of Section 8(a)(1) in this respect. The instance he credited occurred on December 8 when vice-president Wedgwood asked employee Dykstra if he was "involved in this union business." The Trial Examiner apparently overlooked the Wassen incident of the next day, December 9, when Wedgwood requested employee Wassen to come with him and asked whether Wassen "was for what the guys were talking about in the back room" and "why" he was for it. Wedg-

---

[1] See *Ward Manufacturing, Inc.*, 150 NLRB No. 127 involving the unlawful application of a discriminatory no solicitation rule to an off-duty employee; *Bauer Aluminum Company*, 152 NLRB No. 138, in which Member Jenkins dissented because the off-duty return to the premises was in violation of a printed rule which was fairly enforced in his view.

[2] *Miami Coca-Cola Bottling Company*, 138 NLRB 1209, 1210, enf'd 324 F. 2d 501.

wood was asked no questions about this incident. Additional aspects of it were discussed by the Trial Examiner in another context.[3] We find that the Respondent did, in these Dykstra and Wassen incidents, unlawfully interrogate its employees in violation of Section 8(a)(1) of the Act.

Concerning an incident on December 10 the Trial Examiner found that Wedgwood's admonition to employee Breedlove not to engage in "other activities" on company time—confirmed as meaning union activities when Breedlove, who did not "believe" he was neglecting his work, questioned whether union activities were meant—involved no violation of Section 8(a)(1). Specifically the Trial Examiner found that this incident did not constitute a new or unlawful no-solicitation rule of general applicability, or unlawfully interfere with Breedlove specifically, and amounted only to a restriction on Breedlove's "indicated excess to the neglect of his work". We, on the contrary, find that this December 10 admonition constitutes oral promulgation and enforcement of a discriminatory rule against union solicitation at the height of union activity. The record shows that other solicitations on company time had occurred, for raffles, sports pools, and flower and gift collections, and, as found by the Trial Examiner, that the Respondent was aware of that fact. By selecting Breedlove, a known union adherent, in a context of union organizing, and identifying the thrust of its admonition as *union* activities, we think the Respondent made explicit its anti-union purpose rather than a purpose to protect the proper

---

[3] See the second paragraph of the discussion of De Keiver's termination, where the Trial Examiner refers to parts of the Wedgwood-Wassen conversation as a "threat not alleged". Actually the complaint alleges interrogation and threats on December 9 by president DeYoung, whereas the testimony offered by the General Counsel in support was by vice-president Wedgwood. We note that the customary motion to conform the pleadings to the proof, as to names and dates, was granted at the close of hearing.

use of working time.[4] We find, on this record, that the Respondent's rule, in the form of the admonition of Breedlove, was precipitately adopted and enforced to discourage union activities in violation of Section 8(a)(1) of the Act.

2. The Trial Examiner found that the discharges of Breedlove and Albin on the morning of December 11 were not a violation of Section 8(a)(3) of the Act. We disagree with his conclusion. These two employees had the permission of their immediate supervisor to go to Wedgwood's office that morning. When they got there, Wedgwood said: "What can I do for you boys?" Breedlove, the spokesman for the two, said that they were "one hundred per cent for the Union" and felt that they ought to tell Wedgwood that. Wedgwood asked why they were telling him something he already knew and Breedlove repeated his belief that they had a duty to tell him. Wedgwood then said that he had known about unions for 25 years, and they did not have to come in and tell him what they thought of it, he knew all about unions. About this time Wedgwood asked if Albin felt the same way about it; Albin said yes. Wedgwood then ascertained where in the store both were supposed to be working, and sent for DeYoung, to whom he had already reported his warning to Breedlove. In the meantime Wedgwood asked Breedlove whether he remembered their conversation of the night before about ceasing "outside activities" and suggested that Breedlove, by coming to his office, was disregarding his instructions. Breedlove agreed that he was if the conversation in which he

---

[4] See *The Wm. H. Block Company*, 152 NLRB No. 30; *Ward Manufacturing, Inc.*, footnote 1 above., The Trial Examiner implies that Wedgwood spoke to Breedlove twice on December 10, whereas Wedgwood's testimony indicates that this occurred only at the end of the day.

[5] The Trial Examiner did not credit Wedgewood's testimony that Breedlove admitted he was defying Wedgewood and intended to keep on doing it, reference to which Wedgwood omitted from his prehearing statement.

was then engaged was union activity.[5] By this time DeYoung had come in, and Wedgwood said to him: "These boys came in to tell us that they are for the Union one hundred per cent." Whether DeYoung made any comment does not appear, but Wedgwood finally threw up his hands and said: "Well, boys, I guess you had better punch out now." Asked how long the whole conversation lasted, Wedgwood said. ". . . I paused a few minutes—I thought a few minutes—and I would say they probably were in there eight or ten minutes."

The incident impressed the Trial Examiner as having the aspect of employee insubordination, particularly in view of his related finding—not adopted by the Board—that the Respondent had promulgated no rule against union solicitation by warning Breedlove not to engage in union activities the day before. But in the circumstances of this case, we, unlike the Trial Examiner, are persuaded that the Respondent's discharge action was motivated by the antiunion animus already displayed by DeYoung and Wedgwood in the very short period during which the organizing campaign had been under way. As we have found, Wedgwood interrogated employees about the Union on December 8 and 9; on December 8 supervisor Meinardi warned employees Boosamra and Slagter, who were off duty, that they would be fired by DeYoung if he found them engaged in union solicitation; the next morning supervisor Dahnke told a group, including Boosamra, that DeYoung was "on to you guys and he has names and is going to take steps to stop you." Later that morning of the 9th, Boosamra was discharged by DeYoung, and DeYoung referred to the incident in the hearing of the office girl by stating "that was just the beginning" and saying that there would be more.[6] That afternoon DeYoung approached DeKeivers, whom he suspected of union activity, and engaged him in a conversation that resulted in

---

[6] The record also contains the testimony of dairy manager Papa that before lunch on the 9th DeYoung asked him whether he had seen Breedlove and Albin with Union cards.

DeKeivers' quitting (as found by the Trial Examiner and affirmed by the Board), and still later on the 9th Wedgwood told employee Wassen that "they had let a few go" that afternoon. The following afternoon, Wedgwood, talking with Breedlove, promulgated as to him an invalid no-union solicitation rule despite the fact that the Respondent customarily permitted solicitation for other activities on working time. In this context of vigorous antiunionism we conclude that Wedgwood's discharge of Breedlove and Albin the next morning was in furtherance of the Respondent's effort to stop the union campaign by coercive measures, and not merely because he considered that their brief, excused absence from their work stations and the announcement to him of their union support amounted to insubordination. Their declaration of sympathy and support for the Union, made to Wedgwood at a time when he and DeYoung were intent upon blocking the Union, we find was the real motivation for the discharges, thereby constituting those discharges a violation of Section 8(a)(3).

3. The Trial Examiner dismissed the 8(a)(5) allegation on the ground that *only* a unit of both of the Respondent's stores—one located at Grand Rapids and one located at Holland, Michigan—was appropriate and, as the Union had requested recognition, and had majority support, in a unit limited to the Grand Rapids store, no refusal to bargain had occurred. It was his conclusion that a "totality of the evidence" indicated a "combined operation" of the two stores, with merchandise, employees, and funds treated as one. We do not agree with the Trial Examiner's unit finding based on the evidence here. On the contrary, we conclude, for reasons to be discussed below, that the presumptive appropriateness of a single store unit in the circumstances of this case has not been overcome.

On December 16 Union representative Vander Werff, accompanied by Boosamra and Breedlove who had been discharged by the Respondent the week before, requested recognition of Wedgwood, based on a majority showing "in the store". This presumably meant the Grand Rapids

store where the organizing had occurred. Although not discussed by the Trial Examiner, there is testimony that Vander Werff exhibited a pack of authorization cards, and that Wedgwood said he did not want to listen and would "call the cops" if they did not leave. Later the same day the Union put this request in writing, in a letter to the Respondent, and again offered to prove its majority, in a unit of employees "in the store", with signed authorization cards. It suggested a December 21 meeting date for contract negotiations and also requested the reinstatement of Boosamra, Breedlove, and Albin. Having no response to its letter, the Union on December 21 filed a representation petition with the Board, describing the unit as: "All fulltime and parttime employees and all fulltime and parttime employees of leased departments of the employer's retail store and gas station." The Grand Rapids address of the Respondent appears on the petition. Only the Grand Rapids store has a gas station. On December 22 Wedgwood wrote the Union questioning the Union's majority, but expressing a willingness to bargain if the Union could establish a majority "of an appropriate group of employees", and suggesting that it would cooperate in arranging for such an election. Thus the Respondent did not specifically suggest a two-store unit in its answering letter. The complaint, issued on May 14, alleged the single store unit at Grand Rapids, but was amended before hearing to specifically include five gasoline station attendants, and exclude truckdrivers, of which there are two. The Respondent's answer, filed after the amendment, denied the allegations of the complaint on unit, but stated that the Respondent had refused to bargain because it did not believe the Union had a majority "in an appropriate unit", again without setting forth what it considered an appropriate unit. Its contention that a unit combining the two stores was the only appropriate unit was not made until the hearing.

We find that the Union made a valid request for bargaining in a unit limited to the Grand Rapids store, and that the Union's representation petition and the complaint

as amended were merely clarifications of the original unit request.[7]

The two stores are the only stores operated by the Respondent. They are 22 miles apart. Although accessible by freeway, the driving time is estimated as half an hour. There is no public transportation between the two. The Holland store was purchased by the Respondent 9 months before the Union's December 1964 organizing campaign at the much larger Grand Rapids store.[8]

Different hours are kept at the two stores, Grand Rapids opening 2 hours earlier and closing 2 hours later. A single office located in the Grand Rapids store serves both stores, and President DeYoung and Vice President Wedgwood have their offices there. Wedgwood testified that 95 per cent of his time is spent at the Grand Rapids store and that De Young also spends more time there than at the Holland store. Questioned about his pre-hearing statement to the effect that either he or DeYoung was at Holland "approximately one hour a day", Wedgwood testified that he meant one hour as a minimum. DeYoung, however, testified that he goes to Holland "almost" every day and stays anywhere from an hour to all day. Both Wedgwood and DeYoung testified that at Holland there was no store manager, as such, but that Moss, an admitted

---

[7] See *Sabine Vending Co., Inc.*, 147 NLRB 1010, enfd. 335 F.2d 932 (C.A. 5); *Edward Fields, Inc.*, 141 NLRB 1182, 1194-5.

[8] We note a record discussion indicating the size of the employee complement at Grand Rapids and the existence of 45 signed authorization cards which bear the Board's time stamp, including that of alleged discriminatee DeKeivers. As his discharge on December 9 is not found to have been discriminatory, the number of authorization cards is reduced to 44 in a unit of 82 or 83 employees at Grand Rapids, excluding DeKeivers. We find that the Union represented a majority of the employees at Grand Rapids on December 16, 1964.

supervisor, was "in charge of" the Holland store when neither of them was there. As DeYoung put it: "Bob Moss you could probably consider in charge." The following testimony as to Moss's functions ensued:

Q. What were his functions in your absence?

A. To kind of keep his eye on the place and make sure the thing ran good and assign some of the help to what they were supposed to do and see that the groceries got put up and marked properly—generally watch the store.

Q. In other words, he had the day to day supervision of the store?

A. When I wasn't there. In other words, he and I would go over the problems and decide what to do.

Q. You say he assigned employees to work?

A. As they were needed, I would say so.

Q. If an employee were sick, would he give him permission to go home?

A. Yes.

Q. There is no question about his being a supervisor, is there?

A. No, not at all . . .

Q. Was he permitted to discipline employees?

A. We usually discuss things like that, the same as we do in the Grand Rapids store.

Q. And employees were expected to obey his orders?

A. Yes, I think they did.

Q. If an employee refused to obey an order would he be permitted to discharge him?

A. Well, I don't recall that happening. Usually he would have a discussion with me.

Q. He would make a recommendation?

A. I would say so.

Q. How was the hiring handled at the Holland store?

A. There were a few there when we bought the store and I took care of most of that.

Q. What procedure was followed?

A. Well, there was usually an application filled out and left there for me to look at, or someone come

in and ask about it, they would send them in to Grand Rapids to see me, if I don't happen to be there.

Q. Did you interview all of the employees hired for the Holland store?

A. I would say the biggest share of them probably. Let's say yes.

Q. Would Mr. Moss ever interview any of them?

A. He might have interviewed them or talked to them or something to that effect but he usually discussed it with me.

Q. Did he hire any of them?

A. I don't think you can say on his own he hired them, no.

Q. Part time employees?

A. We usually discussed most of that. I was the final say so.

Moss did not testify. From the above we conclude that Moss acted in the capacity of a store manager at Holland in December 1964, when the events in question occurred at Grand Rapids, and that he had substantial authority to carry on the daily operations at Holland. This conclusion as to Moss' authority at Holland is supported by other testimony of DeYoung. Asked if he undertook any day-to-day operations at Holland, DeYoung said: "I would make recommendations . . . I made several recommendations . . ." He further described his own function when at Holland as follows: "Make decisions on where to put things, where to change the aisles around, see if anything had to be done to the property—general management."

On the important question of interchange of employees between Grand Rapids and Holland,[9] the Trial Examiner found that interchange "is and has been common and whenever need exists; and is most significant because it is not noted for payroll purposes." We, on the contrary, would characterize the normal interchange as infrequent, and

---

[9] The only temporary transfers from Holland to Grand Rapids were for the purpose of training Holland personnel.

would draw no inference that it becomes significant because it is not recorded for payroll purposes. In this connection we note that Wedgwood testified that Moss' wages were charged to Holland when he was "spending his time there in order to keep our percentage straight over the sales." It is also noted that the Holland store has its own bank account, used exclusively for its deposits and to cover the costs of its own payroll and merchandise. Thus it seems that the Respondent is definitely interested in maintaining cost accounting records for the separate stores, from which—if an inference is to be drawn—it would seem more reasonable to infer that the failure to record temporary transfers for payroll purposes tends to establish, either that the policy of making these transfers as not conceived as permanent, or that the transfers were insufficient in quantity and duration to have substantial cost impact.

Analyzing the actual evidence on interchange, we note that DeYoung, who testified for the General Counsel as an adverse witness, stated that two maintenance men from Grand Rapids did considerable maintenance at Holland, "particularly in the beginning", and "even today" may go there "as much as once a week for some jobs." He spoke of bringing "Grand Rapids help" to rearrange at Holland "quite often . . . two, three, four times a week when we first took it over." He then said that the period of arranging had gone on for "eight or nine months", and, after that, "some" employees go down every week—"maybe once, twice, or three time." Later, asked by his own counsel whether employees identified by him (DeYoung) as regularly interchanged[10] went to Holland every day, every month, or every week, DeYoung said: "Whenever we want to make some changes down there, which was quite often at that time . . . No special schedule but whenever we needed them, we move them down on a moment's notice and whipped the place in shape and came back to town."

---

[10] The Respondent called no employees to testify on interchange, although DeYoung had identified about 18 as regularly interchanged.

Wedgwood in his testimony seemed to associate interchange of employees with major changes at Holland, which he characterized as "in constant confusion from the time we bought it. Our business was three or four times what it was in there, and everything was too small and confused, and it was just a revolution."

Witnesses testifying for the General Counsel added specific dimension to the degree of interchange. Mrs. DeHollander, the office employee who schedules work for all Grand Rapids employees other than meat department employees, testified on subpena that she was usually consulted about who could be spared to work at Holland. She also stated: "When the Holland store was first opened, they usually sent the night crew over to stock the shelves and rearrange the store, but since then, since they got the store rearranged, there has been no set pattern, just when some special occasion comes up." Supervisor Dahnke, who left the Respondent's employ in April 1965, estimated the frequency of Grand Rapids employees going to Holland to work as "maybe once every two weeks or once a month." Employees Hazzard and Hildebrandt, among those identified by DeYoung as regularly interchanged, testified on subpena to what can only be described as infrequent occurrences. Hazzard was not employed by the Respondent until May, about 2 months after the Holland store opened, and had been to Holland only twice: in August 1964 and in May 1965, the first time to take inventory and the second time to rearrange the produce department. Hildebrandt, an employee for several years, had been to Holland to work twice when the store opened; he had been there twice after that to help stock the shelves for sales. For sales he was part of a crew of six or seven working about 4 hours. Wassen, who also testified on subpena, had been to Holland "about every day" the week Holland opened, but only twice since: once to stock and once to take inventory. Henry, a part-time employee, had gone to Holland just three or four times "shortly after it opened". We note also that Hazzard, identified as one regularly interchanged, testified that, on both occasions when he worked at Holland, Moss had asked him if he wanted to go. Haz-

zard characterized the opportunity as "a pretty big thing to go out to Holland. We don't do it very often". Asked whether other persons than he had gone to Holland "this year", he said "Yes . . . to pick up papers in the side lot there, in the side yard and do a little stock once in a while. . . . I believe they fixed a pipe by the meat department one time."

Based upon the above testimony, we conclude that once the Holland store had been adapted to the business methods of its new owners, the instances of Grand Rapids employees working at the Holland store were limited and unpredictable. Considering this type of interchange in the context of the geographic separation of the stores,[11] the substantial operating authority of the "man in charge" at the newer, Holland store, the absence of any bargaining history for employees at either store, and the fact that no labor organization seeks a broader unit, we find that a unit limited to the employees at the Grand Rapids store of the Respondent is an appropriate unit for collective bargaining.[12] Accordingly, as the Union had majority representation in that unit on December 16, 1964, when it requested recognition of the Respondent, we find that the Respondent refused to bargain in violation of Section 8(a)(5) when it denied recognition on that date. We also find that the Re-

---

[11] Wedgwood conceded that generally employees hired to work in the Holland store are Holland residents or residents of the Holland area. We do not agree with the Trial Examiner that this factor is irrelevant to the unit question, or outweighed by other factors in this case.

[12] See *Sav-On Drugs, Inc.*, 138 NLRB 1032; *Winn Dixie Stores, Inc.*, 143 NLRB 848, 860-1, enfd. 341 F. 2d (C.A. 5); *Merner Lumber and Hardware Co.*, 145 NLRB 1024, 1025-6, enfd. 345 F. 2d 770 (C.A. 9), cert. denied 382 U.S. 942; *Sun Drug Co., Inc.*, 147 NLRB 669, enfd. 359 F. 2d 408 (C.A. 3); *Primrose Super Market of Salem, Inc.*, 148 NLRB 610, 613-17, affirmed without opinion, April 7, 1965 (C.A. 1), cert. denied October 11, 1965, 382 U.S. 830, motion for reconsideration denied December 7, 1965, 353 F. 2d 675 (C.A. 1).

spondent's refusal was not motivated by a good-faith doubt of the Union's majority status inasmuch as there is clear evidence of unlawful efforts, both before and after the refusal, to thwart the employees' union activities and to gain time in which to dissipate that majority.[13]

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Lou DeYoung's Market Basket, Inc., Grand Rapids, Michigan, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively concerning rates of pay, wages, hours of employment, and other terms and conditions of employment with Retail Store Employees Union, Local No. 20, Retail Clerks International Association, AFL-CIO, as the exclusive representative of the employees in the following appropriate unit:

> All full-time and regular part-time employees of the Respondent employed at its Grand Rapids store, including all employees in the grocery, meat, and produce departments, cashiers, and employees at its gas station; excluding truckdrivers, professional employees, guards, the store manager, the assistant managers, managerial and confidential employees, and supervisors, as defined in the Act.

(b) Discouraging membership in Retail Store Employees Union, Local 20, Retail Clerks International Association, AFL-CIO, or in any other labor organization, by discriminatorily discharging any of its employees or dis-

---

[13] See *Joy Silk Mills, Inc.*, 85 NLRB 1263, affd. 185 F. 2d 732 (C.A.D.C.), cert. denied 341 U.S. 914.

criminating in any other manner in respect to their hire or tenure of employment, or any term or condition of employment.

(c) Indicating surveillance of, interrogating and threatening employees in connection with protected concerted activities, and promulgating rules against union solicitation on company time while permitting other types of solicitation on company time.

(d) In any other manner interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act.

2. Take the following affirmative action which will effectuate the policies of the Act:

(a) Upon request, bargain collectively with Retail Store Employees Union, Local No. 20, Retail Clerks International Association, AFL-CIO, as the exclusive representative of employees at Respondent's store in Grand Rapids, Michigan, in the unit found appropriate above, and embody any understanding reached in a signed agreement.

(b) Offer to John Boosamra, James R. Breedlove, and John Albin immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority and other rights and privileges, and make them whole for any loss of pay, together with interest thereon at 6 per cent per annum, in accordance with *F. W. Woolworth Company*, 90 NLRB 289, and *Isis Plumbing & Heating Co.*, 138 NLRB 716; and notify them, if they are presently serving in the Armed Forces of the United States, of their right to full reinstatement upon application, in accordance with the Selective Service Act and the Universal Military Training and Service Act of 1948, as amended, after discharge from the Armed Forces.

(c) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at its place of business in Grand Rapids, Michigan, copies of the attached notice marked "Appendix".[14] Copies of said notice, to be furnished by the Regional Director for Region 7, shall, after being duly signed by the Company's representative, be posted by the Company immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to its employees are customarily posted. Reasonable steps shall be taken by the Company to insure that said notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director for Region 7, in writing, within 10 days from the receipt of this Order, what steps have been taken to comply herewith.

IT IS HEREBY ORDERED that the complaint be dismissed insofar as it alleges the discriminatory discharge of Bernie DeKeivers.

Dated, Washington, D. C. June 21, 1966.

Frank W. McCulloch, Chairman
John H. Fanning, Member
Howard Jenkins, Jr., Member
(Seal) National Labor Relations Board

APPENDIX

NOTICE TO ALL EMPLOYEES

PURSUANT TO

A DECISION AND ORDER

of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify our employees that:

---

[14] In the event that this Order is enforced by a decree of a United States Court of Appeals, there shall be substituted for the words "a Decision and Order" the words "a Decree of the United States Court of Appeals, Enforcing an Order".

WE WILL NOT refuse to bargain with RETAIL STORE EMPLOYEES UNION, LOCAL NO. 20, RETAIL CLERKS INTERNATIONAL ASSOCIATION, AFL-CIO, as the exclusive representative of our employees in the following appropriate unit:

> All full-time and regular part-time employees of Respondent employed at its Grand Rapids store, including all employees in the grocery, meat and produce departments, cashiers, and employees at its gas station; excluding truckdrivers, professional employees, guards, the store manager, the assistant managers, managerial and confidential employees, and supervisors as defined in the Act.

WE WILL NOT indicate surveillance of, interrogate, or threaten employees in connection with protected concerted activities, or promulgate rules against union solicitation on company time while permitting other types of solicitation on company time.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of the right to self-organization, to form labor organizations, to join or assist RETAIL STORE EMPLOYEES UNION, LOCAL NO. 20, RETAIL CLERKS INTERNATIONAL ASSOCIATION, AFL-CIO, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8(a)(3) of the Act, as amended.

WE WILL offer to John Boosamra, James R. Breedlove, and John Albin immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority or other rights and privileges, and make them whole for any

loss suffered as a result of the discrimination against them.

All of our employees are free to become, remain, or to refrain from becoming or remaining, members of RETAIL STORE EMPLOYEES UNION, LOCAL NO. 20, RETAIL CLERKS INTERNATIONAL ASSOCIATION, AFL-CIO, or any other labor organization, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8(a)(3) of the Act, as amended.

Lou De Young's Market Basket, Inc.
(Employer)

Dated ..... by .....
(Representative) (Title)

NOTE: In the event that John Boosamra, James R. Breedlove, or John Albin are presently serving in the Armed Forces of the United States, we will notify them of their right to full reinstatement upon application, in accordance with the Selective Service Act and the Universal Military Training and Service Act of 1948, as amended, after discharge from the Armed Forces.

This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

If employees have any question concerning this Notice or compliance with its provisions, they may communicate directly with the Board's Regional Office, 500 Book Building, 1249 Washington Boulevard, Detroit, Michigan 48226 (Tel. No. 226-3244).

SIXTH CIRCUIT'S DECISION
(Filed January 17, 1969)

No. 18160

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

v.

LOU DE YOUNG'S MARKET BASKET, INC.,
Respondent.

ON PETITION for Enforcement of an Order of the National Labor Relations Board

---

Decided January 17, 1969

Before: PHILLIPS, EDWARDS and CELEBREZZE, Circuit Judges.

CELEBREZZE, Circuit Judge. Pursuant to Section 10(e) of the National Labor Relations Act, 29 U.S.C. § 151, et seq., the Board seeks enforcement of its order of June 21, 1966, directing Respondent Lou De Young's Market Basket, Inc., to bargain with Local 20, Retail Clerks International Association, AFL-CIO on request as the exclusive representative of the employees of Respondent's Grand Rapids, Michigan store. In addition to the bargaining order, the Board directed Respondent to cease and desist from certain unfair

labor practices in violation of Section 8(a)(1) of the Act; to reinstate with back pay three employees discharged in violation of Section 8(a)(3) and (1) of the Act; and to post the usual notices. Jurisdiction is admitted.[1]

Respondent is a Michigan corporation. Its sole stockholders, De Young and Wedgwood, manage the Grand Rapids store and another store that Respondent owns in Holland, Michigan. The Union, which began its organizational campaign on December 8, 1964, limited all of its efforts to the Grand Rapids store and successfully obtained valid authorization cards from a majority of that store's employees. When Respondent refused to recognize it, the Union filed unfair labor practice charges. The Board based its order on these events:

On December 7, 1964, Union representative Vander Werff gave employee Wassen several Union authorization cards. Wassen divided them among some other employees, including Breedlove and Boosamra. On December 8th, Boosamra procured about ten signatures, obtained additional cards, and returned to the store to solicit more signatures. On the same day, Wedgwood and De Young began an antiunion campaign consisting of threats, surveillance, and interrogation. The Board found that this conduct violated Section 8(a)(1) of the Act.[2] Although Respondent does not seriously disagree with these findings, it challenges the Board's conclusion that these violations were substantial, preferring instead to characterize them as slight or "technical" infractions. This contention will be dealt with more fully in connection with our discussion of the Board's bargaining order. Finding substantial evidence in the

---

[1] The Board's decision is reported at 159 N.L.R.B. 954 (1966).

[2] Between December 8th, the start of the Union's campaign, and December 16th, the date fixed by the Board for Respondent's unlawful refusal to bargain, the Board found six Section 8(a)(1) violations, including the promulgation of an unlawful no-union solicitation rule. This figure does not include the discharges of three employees which are also violations of Section 8(a)(1) of the Act.

record as a whole to support the Board's findings as to the foregoing violations, we grant enforcement of the Board's order respecting them.

BOOSAMRA'S DISCHARGE:

On December 9th, while Boosamra was talking with two other employees, De Young walked in and summoned him to the loading dock in the rear of the store. De Young told Boosamra that he was out of a job and handed Boosamra's time card to an office employee with instructions to write out his check. After telling Boosamra to leave by a side door, De Young exclaimed, "that was just the beginning and there would be more."

Respondent urges that Boosamra was discharged for cause related to economic reasons. business had fallen off considerably and Respondent was taking corresponding steps to reduce its labor costs. Since Boosamra had been warned in the past about "goofing off", his discharge was essentially "just the beginning" of Respondent's attempt to align its labor force with the economic realities facing it.

Respondent's contention, however, is not borne out by the record. During the unfair labor practice hearing the following colloquy took place between the Board's counsel and De Young:

> "Q. Now, Mr. DeYoung, you testified, as I recall that as a result of business slump your employment complement was away out of line with the volume of business you were doing, is that correct? A. Yes.
>
> "Q. And consequently you were in the process of cutting back the number of employees. Is that correct? A. Yes.
>
> "Q. But this had nothing to do with the discharge of Boosamra, is that your testimony? A. I fired Boosamra.
>
> "Trial Examiner: I beg your pardon?
>
> "The Witness: Boosamra was discharged for his activities."

The Trial Examiner concluded that Boosamra's unsatisfactory activities," were his support for the Union and that this prompted his discharge by Respondent in violation of Section 8(a)(3) of the Act. The Board agreed and ordered Boosamra's reinstatement with back pay. We enforce the Board's order.

BREEDLOVE AND ALBIN'S DISCHARGES:

On December 10th, Breedlove solicited employees during working hours. He was observed by Wedgwood. As Breedlove prepared to leave for the day, Wedgwood approached him and warned Breedlove that he was neglecting his work and not to spend working time on "outside activities." Breedlove asked if Wedgwood meant union activities, and if this was an ultimatum. Wedgwood gave affirmative answers to both questions.

The next day, Breedlove and Albin asked their supervisor if they could see Wedgwood. They entered Wedgwood's office together and Wedgwood asked what they wanted. Breedlove replied that he and Albin were "100 per cent for the Union." Wedgwood asked why they were telling him something he already knew; Breedlove said that he felt it was his duty. Wedgwood asked Albin if he felt the same way; Albin said he did. Wedgwood then reminded Breedlove about the warning he had given him. At this point De Young walked in, he and Wedgwood exchanged glances, and Wedgwood, "threw up his hands" and told Breedlove and Albin to "go punch out."

The Trial Examiner found no violation of Section 8(a)(3) of the Act in Respondent's discharge of Breedlove and Albin: "I find that it was the extent of Breedlove's activity when he should have been working, not . . . [his] support of the Union which prompted the discharge." The Board, however, disagreed:

> "In this context of vigorous antiunionism we conclude that Wedgwood's discharge of Breedlove and Albin . . . was in furtherance of the Respondent's effort to stop the union campaign by coercive measures, and not merely because he considered that their brief, excused absence from their work stations and the an-

> nouncement to him of their union support amounted to insubordination. Their declaration of sympathy and support for the Union, made to Wedgwood at a time when he and De Young were intent upon blocking the Union, we find was the real motivation for the discharges, thereby constituting those discharges a violation of Section 8(a)(3)."

The "context" of Breedlove and Albin's discharges, according to the Board, consisted of Respondent's numerous unfair labor practices — the threats, interrogations, and surveillance; Boosamra's unlawful discharge; and a further finding that Wedgwood's ultimatum to Breedlove was an invalid no-union solicitation rule.

Respondent urges, on the other hand, that Breedlove and Albin were fired for neglect of work — "for a particularly brazen and provocative neglect of duties done in the face of a specific warning against it."

Neglect of work is of course good cause for discharge, and a context of vigorous antiunionism does not transmute such neglect into protected activity. Yet if Wedgwood's aim in discharging Breedlove and Albin was to strike at the Union, the discharges would be unlawful even if Wedgwood had cause to discharge them. *N.L.R.B. v. Challenge Cook Bros.*, 374 F.2d 147 (6th Cir. 1967); *N.L.R.B. v. Mid-West Towel & Linen Service, Inc.*, 339 F.2d 958 (7th Cir. 1964). The Board, not the courts, has the delicate task of divining an employer's motives from the confusion generated when spirited organizational activity clashes with comparable efforts to eliminate it. *N.L.R.B. v. Bersted Mfg. Co.*, 124 F.2d 409 (6th Cir. 1942). Consequently, we must defer to the Board's construction of Wedgwood's motives if there is substantial evidence in the record as a whole to support that construction. *Universal Camera Corp. v. N.L.R.B.*, 340 U.S. 474, 171 S.Ct. 456, 95 L.Ed. 456 (1950); *N.L.R.B. v. Power Equipment Co.*, 313 F.2d 438 (6th Cir. 1963). The fact that the Trial Examiner disagreed with the Board's conclusion does not alter our search for substantial evidence since the Board may, without consequence, reject the recommendations of its Trial Examiners. *Universal Camera Corp.*, supra; *Joy Silk*

Mills v. N.L.R.B., 185 F.2d 732 (D.C. Cir. 1950) cert. denied, 341 U.S. 914.

Wedgwood's warning of December 10th to Breedlove was, as the Board concluded, an invalid rule against union solicitation and a violation of Section 8(a)(1) of the Act. Its invalidity rested on the fact that other kinds of solicitation flourished during working hours.[3] Although an employer may lawfully restrict solicitation on working time, he cannot discriminate against union solicitation. See *Labor Board v. Babcock & Wilcox Co.*, 351 U.S. 105, 76 S.Ct. 679, 100 L.Ed. 976; *TRW, Inc. v. N.L.R.B.*, 393 F.2d 771 (6th Cir. 1968) Wedgwood's warning, insofar as it amounted to an unfair labor practice, indicates Respondent's improper motive in discharging Breedlove. *N.L.R.B. v. Bersted*, 124 F.2d 409 (6th Cir. 1942).

In further support of the Board's conclusion that Respondent discharged Breedlove and Albin for their union sentiment is the fact that Albin had never been warned. Since Wedgwood discharged Breedlove and Albin as one, the Board could rightly conclude that their simultaneous declaration of union support, made in the context of Respondent's antiunion activity and at a time when union activities were on Wedgwood's mind, triggered the discharges. See *TRW, Inc. v. N.L.R.B.*, 393 F.2d 771 (6th Cir. 1968). "[N]either the Board nor the courts can read the minds of men." *Joy Silk Mills v. N.L.R.B.*, 195 F.2d 732 (D.C. Cir. 1950), cert. denied, 341 U.S. 914. We feel, nonetheless, that the Board's interpretation is reasonable on the whole record. We therefore enforce the Board's order as it relates to the reinstatement of Albin and Breedlove.

THE REFUSAL TO BARGAIN:

The Board, reversing the Trial Examiner, determined that Respondent had violated Section 8(a)(5) of the Act

---

[3] Sports pools, raffles, and gift collections, with management approval, took place periodically. At Christmas employees would collect money for gifts for Wedgwood and De Young.

by refusing to bargain with the Union as exclusive representative of the employees of the Grand Rapids store. The events leading to the Board's order are best illuminated by Union Representative Vander Werff's credited testimony about a meeting of December 16th between he and Wedgwood near Wedgwood's office at the rear of the Grand Rapids store. Vander Werff testified as follows:

> "* * * I asked Mr. Wedgwood if he had a few minutes or seconds, and he said no. * * * I asked him if he had an answer yet with regard to Breedlove and Albin and Boosamra. He said no comment and I said then at this time I would like to inform you that as representative of the retail store employees union local No. 20 we represent a majority of your employees, have them signed on cards which I took out of my pocket and showed him and said we would like to set down [sic] and negotiate wages, hours and working conditions and we are willing to prove our majority.
>
> * * *
>
> "Q. Do you recall having said anything else at this time? A. Yes. When I mentioned it to him, when I stated the last phrase, we represented a majority of the employees of this store, that comes back to me.
>
> "Q. Did you show him the cards? A. I showed him the cards, yes.
>
> "Q. In what manner did you show him the cards? A. I took them out of my pocket and attempted to spread them out in his presence. They were in a stack and I attempted to fan them out.
>
> * * * He said no I don't want to hear it. Threw his hands over his head and above his head, by his head, and ran to his back office.
>
> "Q. Now when he did this, what did you do? A. I followed him to the back office and put my foot in the door, preventing him from closing it.
>
> "Q. Did he attempt to close the door? A. Yes, he attempted to close it and kicked at me, and told me —

"Trial Examiner: What? Kicked at you?

"The Witness: Kicked at me.

"Q. Kicked at what part of you?

"A. My foot.

"Q. Your foot was in the door? A. My foot was in the door and he was kicking at it trying to force me to pull my foot out of the door.

"Q. Did you say anything while this was going on?

"A. Yes, I said I am a representative of the retail store employees union local 20 and we represent a majority of employees and have them signed on cards and we are willing to prove this and we want you to set down [sic] and negotiate for wages, hours and working conditions of the employees in this store. He said to me get out, I will call the cops. I waved the cards in front of him once again and showed them to him in a stack and fanned them out a little bit and then I pulled my foot out of the door and left."

On the same day, the Union wrote to Respondent confirming what took place earlier, and offering again to prove its majority status. Respondent apparently received this letter on December 18th. On December 16th, after his encounter with Vander Werff, Wedgwood told employee Wassen that employees would be laid off if the Union came in and that the Union would not be able to make him negotiate a contract. The Board found that Wedgwood's statement violated Section 8(a)(1) of the Act.

On December 21st, after conferring with counsel, Respondent, in a letter signed by Wedgwood, replied to the Union's letter of December 16th. Respondent refused recognition, stating that it doubted the Union's majority because of certain information it had regarding the circumstances under which the authorization cards were obtained, but that it would bargain with the Union after an election was held to determine if "a majority of an appropriate group of employees in fact wish to be represented by you."

The threshhold question in determining whether Respondent's refusal to bargain violated Section 8(a)(5) of the Act is whether its Grand Rapids store was, as the Board concluded, an "appropriate unit" for collective bargaining purposes within the meaning of Section 9(b) of the Act. Respondent contends that the Holland store employees must be included in the unit. If Respondent is correct in its contention, insofar as all organizational activity was confined to the Grand Rapids store, the Union did not have cards signed by a majority of employees in an appropriate unit when Vander Werff demanded on December 16th that Wedgwood bargain with it.

Section 9(b) of the Act vests wide discretion in the Board to determine the unit appropriate for collective bargaining purposes. See *e.g., N.L.R.B. v. Dewey Portland Cement Co.*, 336 F.2d 117 (10th Cir. 1964). The unit must be one that will "assure to employees the fullest freedom in exercising the rights guaranteed by [the] Act." Section 9(b), National Labor Relations Act. Courts must defer to the Board's expertise in carrying out this intent of Congress. *Packard Motor Car Co. v. Labor Board*, 330 U.S. 485, 67 S.Ct. 789, 91 L.Ed. 1040 (1947). In so doing, we will disturb unit determinations only if they are unreasonable, that is, arbitrary and capricious. *N.L.R.B. v. Merner Lumber & Hardware Co.*, 345 F.2d 770 (9th Cir. 1965); *N.L.R.B. v. Sun Drug Co.*, 359 F.2d 408 (3d Cir. 1960). Obviously, there may be more than one unit that will guarantee employees a full measure of freedom to exercise the right to self-organization secured to them by Section 7 of the Act. A corollary to this is that the Board does not act at its peril, to be later overturned on review by a Court of Appeals, if it acts reasonably. *Packard Motor Car Co. v. Labor Board*, 330 U.S. 485, 67 S.Ct. 789, 91 L.Ed. 1040 (1947); *N.L.R.B. v. Winn-Dixie Stores, Inc.*, 341 F.2d 750 (6th Cir. 1965), cert. denied 382 U.S. 830.

Under some circumstances, a unit embracing a single store of an employer chain will be appropriate for bargaining purposes. See *N.L.R.B. v. Sun Drug Co.*, 359 F.2d 408 (3d Cir. 1966) and cases cited therein. Under other circumstances, however, such a unit may not be appropriate.

See, *e.g., N.L.R.B. v. Purity Food Stores, Inc.*, 376 F.2d 497 (1st Cir. 1967), cert. denied, 389 U.S. 959. The Board must look to the facts in each case and articulate its reasons for concluding that the unit designated by it is appropriate. *Purity Foods*, supra.

In the instant case, the Board determined that a unit limited to employees of Respondent's Grand Rapids store was appropriate because, from the viewpoint of Respondent's employees, the two stores were separate entities. The Board specifically found that each store had its own group of employees and, as of December 16th when the Union demanded recognition, its own man in charge. Of great significance to the Board was the fact that once the Holland store had been adapted to the business methods of its new owners, employee interchange between the two stores was "limited and unpredictable."[4] Compare, *N.L.R.B. v. Purity Foods, Inc.*, 376 F.2d 497 (1st Cir. 1967), cert. denied, 389 U.S. 959, (single unit inappropriate, much interchange) with *Banco Credito y Ahorro Ponceno v. N.L.R.B.*, 390 F.2d 110 (1st Cir. 1968) (single unit appropriate, little interchange); see, *N.L.R.B. v. Winn-Dixie Stores, Inc.*, 341 F.2d 750 (6th Cir. 1965), cert. denied 382 U.S. 830. These findings, along with a geographical distance of twenty-two miles between the stores, buttress the Board's conclusion that the employees of Respondent's Grand Rapids store were an appropriate group for collective bargaining purposes. *Winn-Dixie Stores, Inc.*, supra. Thus, the Board's determination does not "leave some employees under union rules and others working beside them [on their own]:" *Purity Foods*, supra, at 501.

---

[4] Respondent purchased the Holland store about nine months before the Union's organizing campaign began in Grand Rapids. When the smaller Holland store was first opened, Grand Rapids employees helped set up the displays and inventory goods. After the Holland store was operating, Grand Rapids employees were sent to Holland sporadically "to pick up papers on the side" or "to do a little stock once in a while." Grand Rapids employees characterized it as "a pretty big thing" to go to Holland; Holland employees, however, were never sent to Grand Rapids.

The Board relied on additional factors in reaching its determination, namely, the absence of any bargaining history for employees of either store and the fact that no employees sought a broader bargaining unit. Although extent of union organization cannot control the scope of a unit, it may serve as a criterion in shaping it. *Labor Board v. Metropolitan Life Ins. Co.*, 380 U.S. 438, 85 S.Ct. 1061, 13 L.Ed.2 951 (1965). We find no abuse of discretion on the part of the Board in designating the Grand Rapids employees as an appropriate unit for collective bargaining.

Before an employer will be directed to bargain on the strength of authorization cards alone, the Union must show that it made a clear and unequivocal bargaining demand, *N.L.R.B. v. Richman Bros., Inc.*, 387 F.2d 809 (7th Cir. 1967), and that the employer lacked a good faith doubt concerning the Union's majority status when it denied recognition. *N.L.R.B. v. H & H Plastics, Mfg. Co.*, 389 F. 2d 678 (6th Cir. 1968); *Pizza Products Corp. v. N.L.R.B.*, 369 F.2d 431 (6th Cir. 1966); *Furr's, Inc. v. N.L.R.B.*, 381 F.2d 562 (10th Cir. 1967), cert. denied, 391 U.S. 840. Here, as elsewhere, good faith or honesty yields rewards, namely, a representation election in which all bona fide doubts of an employer may be settled.[5] *Pulley v. N.L.R.B.*, 395 F.2d 870 (6th Cir. 1968); *N.L.R.B. v. Jackson Press, Inc.*, 201 F.2d 541 (7th Cir. 1953).

The first issue is quickly disposed of. When Vander Werff approached Wedgwood on December 16th, he carried cards signed by a majority of employees in the Grand Rapids store. His demand that Respondent bargain with the Union as representative of the employees "in this store" was not only clear and forceful, but unequivocal as

---

[5] Although this Court has said a number of times that it is "strong medicine" to base a recognition and bargaining order on the strength of authorization cards alone, see, *e.g. Lane Drug Co. v. N.L.R.B.*, 391 F.2d 812 (6th Cir. 1968), we do not hesitate to enforce such an order in the absence of good faith dealings on the part of an employer. *Atlas Engine Works, Inc. v. N.L.R.B.*, 396 F.2d 775 (6th Cir. 1968).

to which store Vander Werff meant. "This store" did not mean the Holland store, or the two stores together; it clearly meant the Grand Rapids store alone.[6] *Cf. Lane Drug Co. v. N.L.R.B.*, 391 F.2d 812 (6th Cir. 1968). We next consider what, if any, good faith doubt Respondent had on December 16th as to the Union's majority.

Prior to December 16th, employee Ortega told De Young and Wedgwood that pressure had been put upon employees to sign authorization cards. The Trial Examiner, however, dismissed Ortega's testimony as insubstantial since neither Wedgwood nor De Young expressed any interest in what Ortega told them. The Board concluded that Respondent's unfair labor practices — before and after the bargaining demand — indicated Respondent's lack of good faith. In the Board's view, Respondent had completely rejected the principle of collective bargaining and was attempting to gain time to dissipate the Union's majority.

We believe that the General Counsel has met his burden of proving Respondent's bad faith. *N.L.R.B. v. River Togs, Inc.*, 382 F.2d 198 (2d Cir. 1967); *Lane Drug Co. v. N.L.R.B.*, 391 F.2d 812 (6th Cir. 1968). Violations of Section 8(a)(1) of the Act may indicate that an employer's assertions of good faith doubt are spurious, *N.L.R.B. v. Austin Powder Co.*, 350 F.2d 973 (6th Cir. 1965), especially where such violations are of the "flagrantly coercive" type, or where an employer continues to commit unfair labor practices after

---

[6] We agree with the Board that Respondent's refusal to bargain occurred on December 16th and whatever good faith doubt Respondent had must be measured from that date. Once a request for recognition and demand to bargain are made an employer is to be granted a reasonable time to investigate the union's majority claim. *N.L.R.B. v. River Togs, Inc.*, 382 F.2d 198 (2d Cir. 1967). Respondent, however, chose to ignore Vander Werff's oral demand, replying instead to the Union's letter which it received two days later. The letter, however, was a *second* demand that Respondent recognize and bargain with the Union. Since the Union need only ask once, Respondent is bound by its rejection of Vander Werff's earlier demand.

a bargaining demand has been made. *N.L.R.B. v. Ben Duthler, Inc.*, 394 F.2d 28 (6th Cir. 1968).

In the instant case, there were several 8(a)(1) violations, including Wedgwood's threat after the Union's demand of December 16th to lay off employees and not deal with the Union. Also among Respondent's unfair labor practices were its discharges of Boosamra, Breedlove, and Albin. See *N.L.R.B. v. Ben Duthler, Inc.*, supra. We disagree with Respondent's assertion that such unfair labor practices were merely technical violations of the act, preferring instead to characterize Respondent's conduct from the inception of the Union's campaign as a substantial and sustained effort to thwart Respondent's employees in their efforts to organize its store.

Enforcement of the Board's order is granted.